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Justice News

ACAMS AML Risk Management Conference Prepared Remarks Of U.S. Attorney Preet Bharara

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It is a pleasure to be here today at this conference as one of the keynote speakers, and to be able to speak to you about what I think is an incredibly important and timely topic: managing anti-money laundering risk.

Enforcement of anti-money laundering laws and the Bank Secrecy Act—or BSA—is a top priority for me and my Office.

It is both an area of high risk for increasingly global and complex financial institutions and an area where—as we have seen in the past several years—misconduct and institutional lapses can have devastating consequences not just to the institutions themselves but to everyday people and to the rule of law.

After all, when anti-money laundering controls fail, it is easier for Ponzi schemes to thrive; for terrorists to plot; for drug kingpins to profit; for rogue nations to evade sanctions; for tax cheats to avoid prosecution. Financial institutions cannot become witting—or even unwitting—hosts to criminal parasites.

This presents a challenge, of course. It is a challenge and responsibility for institutions large and small—from big banks dealing in wire transfers to startups bartering in Bitcoins.

I want to mention a few things this afternoon.

First, I want to talk about the importance of holding institutions, in addition to individuals, accountable for criminal misconduct. It is important for accountability and deterrence generally, but particularly important, I believe, in the context of BSA and money laundering violations.

Second, I will spend a few minutes on the need for law enforcement—and our partners in anti-money laundering effort, those in this room—to stay ahead of the curve. The marketplace is

getting more complex and more technologically sophisticated, and so are the criminals. I want to talk about how we have—and will continue—to combat innovations in the criminal world, including the use of underground, anonymous websites and virtual currencies, like Bitcoins, to try to avoid detection and prosecution.

Finally, I want to discuss my Office's commitment to this area—your area—of anti-money laundering that includes structural changes to the organization of my office and the dedication of greater resources to this effort.

So let me start first with the role and importance of holding institutions accountable for misconduct or failures in their anti-money laundering obligations.

As many of you know, just three weeks ago, my Office brought criminal charges against JPMorgan Chase for violating the BSA in connection with Madoff's epic fraud. As I stated in announcing the charges, the case was brought because JPMorgan had—as an institution—failed, and failed miserably, in its obligations under the anti-money laundering provisions of the BSA.

The BSA is not a tip; it is not a suggestion. It is a legal requirement, enforceable through criminal sanction. Financial institutions need to take it seriously because we are deadly serious about enforcing it.

The felony charges were filed and announced as part of a deferred prosecution agreement, or DPA, whereby the charges will be held in abeyance during the pendency of the agreement.

As a condition of the Deferred Prosecution Agreement, JPMorgan was required to:

- (1) admit and accept responsibility for its misconduct in a detailed statement of facts;
- (2) continue reforms of its compliance and anti-money laundering practices, with regular reporting to my Office;
- (3) cooperate for a two year period and refrain from committing any crimes; and
- (4) pay \$1.7 billion through a parallel forfeiture action.

This was the first time that a major Wall Street bank was subject to a DPA of this type. And the penalty of \$1.7 billion was the largest ever forfeiture from a bank; the largest ever penalty imposed by the Department of Justice under the BSA; and the second largest forfeiture ever for any institution or individual—behind only another Madoff-related forfeiture by my Office.

By all measures, this was an aggressive action to take against the nation's largest bank. But it was appropriately aggressive.

As set forth in the detailed statement of facts, for years, the bank ignored red flags; allowed suspicious round-trip transactions through Madoff's account; finally grew concerned enough to file a report in the UK; and ultimately decided to reduce its own exposure to Madoff because of suspicions of fraud.

But all the while, JPMorgan never filed a single suspicious activity report in the United States and never raised a concern to the bank's anti-money laundering department in the U.S. Meanwhile, when it mattered to its own profit, JPMorgan miraculously connected the dots and abandoned ship, saving itself more than \$275 million before Madoff's fraud was exposed to the rest of the world.

As all of you at this conference know and well understand, the BSA is the first and most critical line of defense against money-laundering and other crimes that can occur through our financial system. The BSA requires all financial institutions to establish and maintain effective anti-money laundering compliance programs and importantly, to know their customers so that they can reasonably identify and report suspicious activity.

As I've said and as you know, the BSA is not merely a suggestion and it has to be taken seriously.

It was not taken seriously by JPMorgan in dealing with Madoff, and the bank paid a price for it.

And JPMorgan is not going to be the last big case that my Office brings in this area, I can promise that.

The facts in the JPMorgan case, in my mind and the minds of my Office's career prosecutors, warranted a criminal resolution, and a criminal resolution by the institution itself.

I emphasize the point that we felt a criminal resolution by the "institution" was appropriate, because some have questioned the advisability and effectiveness of pursuing criminal cases against institutions, arguing that the focus should remain solely on prosecutions of individuals. That view flows from a false premise.

Of course, it is critical to prosecute individuals who have committed crimes. It is the bread and butter of what prosecutors do; that is what we do every day we come to work. But individual liability is not the whole of our mission. It should not be one or the other; individuals or institutions.

In my view, to effectively deter criminal conduct and to do justice, we need to do both. Individuals must be held accountable for criminal conduct, but sometimes blameworthy institutions need to be held accountable too. And that is especially so in the AML context.

When I say we need to "hold institutions accountable," I am not speaking narrowly or prejudging the outcome in any particular case. Investigating and prosecuting institutions—like individuals—is a serious business and can have devastating consequences. It must be done with great care and appropriate seriousness of purpose—just as we do in making sober decisions about individuals' liberty.

There are many ways in which institutions can be held to account. We should—and my Office does—consider and use all of them as appropriate, based on the unique facts of each case.

At one end of the spectrum, institutions can be prosecuted criminally and be convicted either by guilty plea or after trial of federal crimes, as our Office recently did with SAC Capital, a hedge fund where seven different employees have been charged and convicted of insider trading. In that case, not only did SAC plead guilty to insider trading, as an institution, but it agreed to pay a

financial penalty of \$1.2 billion, of which \$900 million was to resolve a forfeiture and money-laundering action.

At the other end of the spectrum, we can and have taken civil actions and sought civil monetary fines and recovery. For that purpose, in early 2010, I created a Civil Frauds Unit to pursue large-scale and sophisticated financial frauds through civil statutes. That unit has successfully brought actions against financial institutions, pharmaceutical companies and other companies engaged in fraud and has obtained hundreds of millions of dollars in recoveries.

In fact, our Office recently obtained the first jury verdict against a bank—Bank of America—for fraud relating to the sale of mortgages, the conduct at the heart of the recent financial crisis. We were outspent and outnumbered but not outmatched.

And in between a civil action and guilty plea are criminal resolutions through admissions of facts, payment of penalties and non-prosecution or deferred prosecution agreements, as was the case of JPMorgan.

All of these tools are in our toolbox. And we should use all of them in holding institutions accountable for misconduct and for failings that can, and should, appropriately be put on institutions themselves.

Let me say a few words here about criminal prosecutions of institutions and the question that many people have asked: whether certain institutions have become simply too big to prosecute, or “too big to jail.” I have addressed this issue many times. This is what I said about it in June 2011 at a gathering of the New York Financial Writers’ Association:

“[I]n my view, we should not be telling any institution that it is too big to be prosecuted. No one should receive a get-out-of-jail-free card based on size. There may be, at the end of the day, extremely compelling reasons why for the sake of innocent third parties a disposition short of a criminal charge is appropriate in some particular case, but there should never be a presumption of immunity based on size. That is a dangerous thing. The financial system ... still arguably allows too much passing of the buck. We should not be adding a presumption of prosecutorial immunity to the mix of moral hazards.”

I believed that three years ago, and I believe that today.

As I’ve said, institutional accountability is particularly appropriate in the BSA context because many of the anti-money laundering laws and BSA provisions are specifically directed at institutions.

Institutions create and implement policies, procedures, and controls and therefore, it is only appropriate for institutions to be held responsible if they fail to do so effectively as required under the BSA.

Also, effective deterrence sometimes requires that institutions be punished, because sometimes—and especially in the AML and BSA context—it is the institution itself that has failed. That is only common sense. A breakdown in a system requires an overhaul of the system. A perversion of a culture requires an overhaul of the culture.

So, sometimes only institutional reform can usher in real and meaningful change. And that is often best promoted only through institutional accountability. Why? Because a necessary overhaul in favor of reform often requires significant structural change, which cannot be accomplished by any single individual, especially in a large company. It may take the creation of new infrastructure or the purchase of new technology or the reorganization of entire business divisions. It may take, more fundamentally, a reordering of priorities or a recommitment to firm-wide ethics or a revamping of hiring, promotion, and training policies. It may take, in the end, an overhaul of the culture.

Those are institutional responsibilities—they fall to management, to boards of directors, to legal and business advisors, and ultimately to shareholders. When institutions are held to account for institutional failures, then responsible institutions will and do respond.

Anyone who blithely opines that there is no deterrent—or other—value in holding institutions, as well as individuals, accountable is just plain wrong. It makes a difference, and we have seen it make a difference.

Now let me talk about the future and the need for law enforcement—and for all of you anti-money laundering professionals—to stay ahead of the bad guys.

As financial institutions and the financial markets become more complex and more varied, so do the ways in which proceeds of criminal conduct can be and are being laundered. And the laws and the enforcement of laws must reflect that.

For example, many of you have no doubt been following the growth of virtual or electronic currencies, including Bitcoins.

Administrators and exchangers of virtual currencies—just like those engaged with traditional currencies—must comply with the same BSA reporting requirements, including registering with FinCEN as a money services business, maintaining effective anti-money laundering programs, and filing suspicious activity reports.

That is important, because as more and more financial transactions take place through non-traditional banking institutions, the more the regulatory and legal requirements must reflect that. And conferences like this one are important to that end. My friend and former colleague, Benjamin Lawsky, now Superintendent of the Department of Financial Services, is holding hearings over the next two days about virtual currency and Bitcoins in particular. The Deputy United States Attorney at my Office, Richard Zabel, will be testifying, and I urge you to listen to what he and others have to say.

Thinking about and dealing with the evolution of the criminal marketplace is not just an interesting academic exercise for conferences or the mere subject of hypothetical regulatory guidance. Our Office has seen and tackled firsthand creative uses of technology to commit crimes, and specifically to help launder criminal proceeds.

Last October, we charged and arrested the alleged owner and operator of Silk Road—a global, online black-market bazaar of illegal drugs and other unlawful goods and services. It was a website designed to conceal the true IP addresses of the computers logging into the network. Under this cloak of anonymity, Silk Road served as an E-Bay for drugs and other illegal goods

and services. Literally, bricks of heroin and cocaine were displayed openly on the website, and millions of dollars-worth of illegal goods were traded openly through Silk Road.

Not surprisingly, considering what people were selling and buying on it, the trades on Silk Road were not settled through normal credit cards or wire transfers of cash, but rather through virtual currency. In that case, Bitcoins.

What those who operated Silk Road and bought and sold illegal drugs on Silk Road bet on was that law enforcement would not be able to break through the shield of anonymity. But we did, and in October, at the same time we arrested the alleged owner and operator of Silk Road, we shut down the website and brought a civil forfeiture action seeking forfeiture of the Bitcoins belonging to Silk Road as proceeds of money laundering.

As a result, earlier this month, the Court signed an order in that action directing the forfeiture of close to \$30 million worth of Silk Road's Bitcoins, a record seizure of virtual currency.

I want to recognize something important in that case: we forfeited Silk Road Bitcoins not because they are Bitcoins, or because we think Bitcoins are inherently illegal or suspect—they are not. We forfeited them, just as we have cash, bank accounts, cars, yachts, and other tangible property in other cases, because they were the proceeds of crimes.

So the message is a simple one, and it is this: If you want to develop a virtual currency or a virtual currency exchange business, knock yourself out. But you have to follow the rules. All of them. And if you want to invest in such a business, you better kick the tires and make sure compliance there is not a joke.

And those who don't follow the rules can wind up criminally charged, like two men in a case we unsealed just this morning, Robert Faiella and Charlie Shrem. As alleged in the complaint, Mr. Faiella, an underground Bitcoin exchanger, and Mr. Shrem, the CEO of a Bitcoin exchange company and the Vice Chairman of a foundation promoting Bitcoin use, schemed to sell over \$1 million in Bitcoins to those they knew were using it to buy and sell illegal drugs on Silk Road. One of them, Mr. Shrem, was the AML compliance officer for his company, no less!

Both men were this morning charged with engaging in a money-laundering conspiracy and operating an unlicensed money transmitting business. Shrem was also charged with the willful failure to file suspicious activity reports as required by the BSA. We believe this is the first criminal case involving BSA-violations by Bitcoin exchangers.

In my view, truly innovative business models don't need to resort to old-fashioned law-breaking, and when Bitcoins, like any traditional currency, are laundered and used to fuel criminal activity, we have no choice but to act. We will aggressively pursue those who would coopt new forms of currency for illicit purposes, as the two individuals charged in today's case allegedly did.

As evidence of my Office's ongoing commitment to pursuing and prosecuting money laundering offenses and BSA violations, earlier today, I announced that our Criminal Division's Asset Forfeiture Unit will be renamed the Money Laundering and Asset Forfeiture Unit.

This renaming is a recognition of the critical role that unit and the prosecutors in that unit have played in working with other units in our Office, including our Complex Frauds Unit and our

Securities and Commodities Fraud Unit, to bring some of the nation's most significant and cutting-edge money laundering actions. As a reflection of the unit's success, it recovered about \$3 billion in 2012 and \$1.12 billion in 2013, and \$2.9 billion in the last three months alone (between JPMorgan and SAC).

Given that my Office is in the middle of a hiring freeze, I often like to make this point. Our Office budget, which covers everything we do, is about \$50 million a year. The Asset Forfeiture Unit's work, simply in connection with JPMorgan and SAC, would be enough money (if the money came to us, which it doesn't) to fund everything my Office does for 58 years. And I'm still unable to hire somebody.

Anyway, the renaming also reflects the Office's commitment going forward to dedicate more resources—in terms of people, money and technology—to fighting money laundering crimes and BSA violations.

As anti-money laundering professionals, I expect that you welcome our Office's renewed commitment to this area. And I am greatly encouraged and heartened to see, as I look around this room, that we are not alone in this important fight.

Because at the end of the day, prosecutors cannot be everywhere, and by the time prosecutors get involved, it is probably too late. Bad things have already happened. Long before an office like mine ever sends a subpoena or asks to see a company's anti-money laundering policies, good people like you can keep it from ever getting to that point. And that is precisely why you are here and why I am glad you invited me to speak.

Some people question whether this a battle that can be won. With the size, scope, and complexity of today's financial institutions, can we really expect big global institutions to keep track of what is going on in its far flung operations? Can we really expect the left hand to always know what the right hand is doing?

Is effective compliance just a fantasy?

I submit it is not. It just takes will and application of the same ingenuity and innovation that those institutions bring to the business of making money. This should not be that hard ultimately.

Today's global financial institutions are indeed incredibly complex and sophisticated places. They trade and deal in all sorts of products and services, with all types of counterparties and customers, in every corner of world.

And despite all this complexity, I guarantee you that every second of every minute, these huge global institutions know exactly how much money is owed to them, to the penny, and how to get it. They know and they keep track—no matter how difficult and complicated—because it is their job and because they care about it and because it affects the bottom line.

Well, compliance with the law is also part of their job and it is something they should care about. And if they don't, we will make sure that they do.

Because part of my job is to make sure that people know that compliance failures can affect the bottom line too.

It is just a matter of will.

And gatherings like this one, with people like you who have dedicated your professional lives to making sure that our companies and financial institutions comply with their legal obligations and do not become conduits for fraud, give me great hope and optimism that we will find a way and people will find the will.

It gives me confidence that together we can usher in a new age of institutional accountability and responsibility. And that together, we can ensure that our companies set a global standard for operating ethically and with integrity.

Thank you again for having me here.

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